IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

MISC. CIVIL CONTEMP CASE NO. 118 OF 2004

Sri Debki Nandan Bhatt, S/o Sri Rewa Dhar Bhatt, R/o Plot No. 7-A, Vernon Cottage Compound, Long View, Tallital, Nainital.

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Petitioner

Versus

1. Radha Ballabh Bhatt, S/o Sri Krishna Nand Bhatt,
2. Prakash Bhatt S/o Sri Radha Ballabh Bhatt,
3. Smt. Suneeta Pande W/o Sri Urba Datt Pande, D/o Sri Radha Ballabh Bhatt,
4. Urba Datt Pande W/o Sri Chinta Mani Pande,
   All R/o Plot No. 5, Vernon Cottage Compound, Long View, Tallital, Nainital.

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Respondents

Mr. P.B. Goswami learned counsel for the petitioner.

Mr. Arvind Vashistha learned counsel for the respondents.

HON'BLE P.C.PANT J.

1. This civil contempt has been filed under section 12 of the Contempt of Courts Act, 1971 complaining the disobedience of this court's order dated 18.02.2003 passed in A.O.no.198 of 2002 and A.O.no.199 of 2002.

2. The brief facts of the case, as narrated in the petition, are that there is 6' wide Rasta land belonging to the petitioner between the plots no.4 and 5 on one hand and plot no. 7 B on the other hand in Long View area of Tallital Nainital. Suit no.13 of 1999, appears to have been filed by the petitioner and his brother Ganesh Bhatt for injunction against the defendants (present respondents) for directing them not to pass

through the disputed Rasta land of the petitioner. It is further alleged that during the pendency of suit in August 1999 the respondents encroached upon the disputed Rasta land and blocked it thereby depriving the petitioner and his brother from using the same. On this the petitioner and his brother appear to have filed another suit no.51 of 2000 against the respondents and two new defendants for removal of obstruction from the Rasta land. Both the suits were consolidated together by the learned trail court who disposed them of. Aggrieved by the judgment and order of the learned trail court the said new defendants preferred appeal before the lower appellate court who decided the appeals by common judgment remanding the case to the learned trial court. Aggrieved by the order of the lower appellate court it appears that the petitioner on one hand and the said defendants on the other hand filed two cross appeals A.O.no.198/2002 and A.O.no.199 of 2002 before this court. In paragraph no.11 of the petition it is alleged that court no.2 of this court appointed Sri Nand Prasad Advocate as Conciliator to settle the dispute amicably. On receiving his report by order dated 18.02.2003 both the appeals were disposed of by the said court. According to the petitioner the report of the surveyor was also made binding between the parties as per the impugned order dated 18.02.2003. Annexing the copies of the reports and the map the petitioner has complained by means of this petition willful disobedience of the court's order by the respondents and it has been prayed that they be punished for the same.

3. A counter affidavit has been filed by the respondents in which they have denied the allegations of disobedience if committed by them. They have disputed the position and location of the angles and wall in question by stating that the same lies over the plot belonging to them. It is further stated that there is no direction from the court to remove the angles or the obstruction from the alleged Rasta land. It is further stated in the counter affidavit that it is the petitioner who has challenged the conciliator's report in violation of the court's order. Alleging the assertions of the petitioner as false, the respondents have submitted that though they have committed no contempt but still they tender unconditional apology if they were found to have done so.

4. In the rejoinder affidavit the petitioner has denied the contents of the counter affidavit. The petitioner has also filed supplementary rejoinder affidavit whereby he has filed certain documents including a report of the surveyor.

6. I have heard the learned counsel for the parties and perused the affidavit, counter affidavit, supplementary counter affidavits, rejoinder affidavit and supplementary rejoinder affidavit alongwith annexures thereto.

7. The short question for consideration before this court is whether the respondents have committed willful disobedience of the impugned order dated 18.02.2003 passed by this court in A.O. no.198 of 2002 and A.O.199 of 2002.

8. Before further discussion it is pertinent to mention the directions contained in the impugned order dated 18.02.2003 which reads as under:-

> "The parties counsel agreed that these appeals may be disposed of in terms of the report of the conciliator which has been treated to be a compromise deed between the parties. Therefore, these appeals are disposed of in terms of the report submitted by the conciliator.
>
> However, it is made clear that there shall not be any encroachment on the land of Smt. Asha Pant and Sri Sharat Chanra Tiwari and construction shall be made after the measurement of the land of the parties for which the parties shall apply before the Lake Development Authority. If the surveyor is available with the Lake Development Authority then the survey shall be carried out otherwise the Lake Development Authority shall request the S.D.M. concerned to provide surveyer for the measurement of the land so that the dispute between the parties, may be settled in terms of the compromise. The survey shall be completed within 15 days. Thereafter parties shall abide the demarcation made by the surveyer.
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> All the cases pending to the dispute in these appeals are hereby disposed of finally.
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> Sd/- P.C. Perma J."

9. From the perusal of the above-impugned order it is clear that no injunction has been issued against the respondents in respect of the disputed Rasta land belonging to the petitioner. Instead, it is provided in the order that "there shall not be any encroachment on the land of Smt. Asha Pant and Sri Sharat Chandra Tiwari" who are not the parties in this contempt petition.

10. Sri P.B.Goswami learned counsel for the petitioner, during arguments, submitted that the obstruction over the disputed Rasta land was raised in the year 1999. It is pertinent to mention here that the order of which disobedience has been complained is dated 18.02.2003. As such it cannot be said that if the respondents have done something causing obstruction is a disobedience of the above order. However, the learned counsel for the petitioner argued that after the appeals were disposed of on 18.02.2003, every day the obstruction standing is giving rise to the contempt of the court by not removing the same. To scrutinize the facts deeply, I went through the conciliator's report, which is at page no.13 of the rejoinder affidavit. There is no agreement between the parties to remove the obstruction from the land. Rather conciliator's report merely mentions that he proposed the appellants to transfer the land in dispute to respondents' no.1 and 2 at a reasonable price. That proposal by itself does not become any direction of the court.

11. The learned counsel for the petitioner has drawn my attention to surveyor Amin's report dated 1.9.2003 which is annexed at page no.14 and 15 and submitted that the surveyor has mentioned that the owner of plot no.5 obstructed the Rasta land. The perusal of the said report shows that the surveyor has not mentioned to whom the Rasta land belongs rather he has only mentioned the Rasta which goes from the southern corner of plot no. 7 B to eastern corner of plot no.7A is obstructed by the owner of plot no.5. If this report is read with the order dated 18.02.2003 is which it is only

mentioned that the parties will abide by the surveyor's report. As such by reading both together still no direction comes out which can be said to have been violated by the respondents.

12. My attention was drawn by the learned counsel for the petitioner to the principles laid down in **Mohammad Idris and another, Vs.Rustam Jahangir Bapuji and others. AIR 1984 Supreme Court 1826 and D.D.A. Vs.Skipper Const Co. 1996 Allahabad CJ 1045 (at page no.1052)** and it is contended that this court can issue direction apart from punishing the respondents for contempt of court. The above principles of law can be applied to the facts of the present case provided some alleged contempt has been found to have been proved. My attention has also been drawn to the case law reported in **Sri Krishna Singh Vs. Mathura Ahir and others, (1981) 4 Supreme Court Cases 421 (at 427) and Ekka Tonga Mazdoor Union and others Vs. The Aligarh Municipal Board and others, AIR 1967 Allahabad 93** and argued that the contemnor should be dealt with severally for not carrying out the order of the court. This court is unable to apply the said case laws for want of direction in the impugned order dated 18,2.2003 as to removal of obstruction by the respondents.

13. In view of the above discussion, facts and circumstances, no willful disobedience of the court's order can be said to have been committed by the respondents. As such the petition for punishing the

respondents under Contempt of Courts Act, 1971 deserves to be dismissed. Accordingly, the contempt petition is dismissed and the notices are discharged. No order as to costs.

(P.C. Pant J)

October 04, 2004